

§ 93A-62. Delinquent assessments; developer guarantee.

(a) Delinquent assessments may bear interest at the highest rate permitted by law or at some lesser rate established by the managing entity. In addition to interest, the managing entity may charge a reasonable administrative late fee for each delinquent assessment. Any costs of collection, including reasonable collection agency fees and reasonable attorney's fees, incurred in the collection of a delinquent assessment shall be paid by the owner and shall be secured by a lien in favor of the managing entity upon the timeshare with respect to which the delinquent assessment has been incurred.

(b) The managing entity may deny the use of the timeshare units or facilities, including the denial of the right to make a reservation or the cancellation of a confirmed reservation for timeshare periods, to any owner who is delinquent in the payment of any assessments made by the managing entity against the owner for common expenses, in accordance with the following:

- (1) The managing entity must, no less than 30 days after the date the assessment is due, notify the owner in writing of the total amount of any delinquency which then exists, including any accrued interest and late charges permitted to be imposed under the terms of the timeshare program or by law and including a per diem amount. The notice shall be sent to the owner at the owner's known address as recorded in the books and records of the timeshare program.
- (2) The notice shall clearly state that the owner will not be permitted to use the owner's timeshare, that the owner will not be permitted to make a reservation in the timeshare program's reservation system, or that any confirmed reservation may be canceled until the total amount of such delinquency is satisfied in full or until the owner produces satisfactory evidence that the delinquency does not exist.
- (3) The notice shall be effective to bar the use of the owner and those claiming use rights under the owner, including the owner's guests, lessees, and persons receiving use rights in the timeshare through an exchange program; provided, however, that (i) a managing entity desiring to deny the use of the timeshare to persons receiving use rights in the delinquent owner's timeshare through an exchange program that has an affiliation agreement with the managing entity shall notify the affiliated exchange company in writing of the denial of use at the time that the notice was sent to the owner and (ii) any person claiming through the affiliated exchange program who has received a confirmed assignment of the delinquent owner's use rights from the affiliated exchange company prior to the expiration of 48 hours after the receipt by the affiliated exchange company of the written notice from the managing entity shall be permitted by the managing entity to use the owner's use rights.
- (4) Any costs reasonably incurred by the managing entity in connection with its compliance with the requirements of this section may be assessed by the managing entity against the delinquent owner and collected in the same manner as if those costs were common expenses of the timeshare program allocable solely to the delinquent purchaser.
- (5) A managing entity may not enforce the denial of use against any one owner or group of owners without similarly enforcing it against all owners, including all developers.

(c) In addition to the denial of use pursuant to subsection (b) of this section, the managing entity may give further notice to the delinquent owner that the managing entity may rent the delinquent owner's timeshare, or any use rights appurtenant thereto, in accordance with the following:

- (1) A further notice of intent to rent must be given no less than 30 days after the date the assessment is due and must be delivered to the purchaser in the manner required for notices under subsection (b) of this section.
- (2) The notice shall state that unless the owner satisfies the delinquency in full, or unless the owner produces satisfactory evidence that the delinquency does not exist, the purchaser will be bound by the terms of any rental contract entered into by the managing entity with respect to the owner's timeshare or appurtenant use rights.
- (3) The notice shall state that the owner will remain liable for any difference between the amount of the delinquency and the net amount produced by the rental contract and applied against the delinquency, and the managing entity shall not be required to provide any further notice to the owner regarding any residual delinquency.
- (4) The managing entity's efforts to secure a rental shall not commence on a date earlier than 10 days after the date of the notice of intent to rent.
- (5) The managing entity must apply the proceeds of any rental, net of any rental commissions, cleaning charges, travel agent commissions, or any other commercially reasonable charges reasonably and usually incurred by the managing entity in securing rentals to the delinquent owner's account.
- (6) A managing entity may make a reasonable determination regarding the priority of rentals of timeshares and, if the delinquent owner whose timeshare is rented cannot be specifically determined due to the structure of the timeshare program, the managing entity may allocate any net rental proceeds in any reasonable manner.
- (7) In securing a rental, the managing entity shall not be required to obtain the highest nightly rental rate available, nor any particular rental rate, and the managing entity shall not be required to rent the entire timeshare or appurtenant rights; however, the managing entity must use reasonable efforts to secure a rental that is commensurate with other rentals of similar timeshares or use rights generally secured at that time.

(d) For timeshare estates located in this State, the managing entity shall have a lien on a timeshare for any assessment levied against that timeshare from the date such assessment becomes due. The managing entity shall also have a lien on a timeshare estate of any owner for the cost of any maintenance, repairs, or replacement resulting from an act of the owner or the owner's guest or lessee that results in damage to the timeshare property. All of the following apply to a lien imposed under this section:

- (1) The managing entity, or the holder of the lien, may bring a judicial action in its name to foreclose the lien in the nature of an action to foreclose a mortgage or deed of trust and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. As an alternative to initiating a judicial action, the managing entity may initiate a nonjudicial foreclosure proceeding to foreclose the assessment lien.
- (2) The lien is effective from the date of and shall relate back to the recording of the original timeshare declaration, or, in the case of lien on a timeshare located in a phase timeshare program, the last to occur of the recording of the original timeshare declaration or amendment creating the timeshare. However, as to first mortgages of record, the lien is effective from and after filing of the claim of lien in the office of the clerk of superior court in the county where the timeshare estate is located.

- (3) The claim of lien shall state the name of the timeshare program and identify the timeshare for which the lien is effective, state the name of the owner, state the assessment amount due, and state the due dates. The claim of lien shall be signed and acknowledged by an officer or agent of the managing entity or the holder.
- (4) The lien shall expire upon the earlier of:
 - a. The date it is satisfied.
 - b. Five years from the date the claim of lien is filed unless an action to enforce the lien is commenced within that time.
- (5) A claim of lien for assessments may include assessments which are due when the claim is recorded and all assessments that subsequently become due and are delinquent. Upon full payment, the person making the payment is entitled to receive a satisfaction of the lien.
- (6) A judgment in any action or suit brought to foreclose the claim of lien may include costs and reasonable attorney's fees for the substantially prevailing party.

(e) A successor in interest, regardless of how the timeshare has been acquired, including a purchaser at a judicial sale or foreclosure trustee sale, is jointly and severally liable with their predecessor in interest for all unpaid assessments against the predecessor up to the time of transfer of the timeshare to a successor, without prejudice to any right a successor in interest may have to recover from their predecessor in interest any amounts assessed against the predecessor and paid by the successor; provided, however, a first mortgagee or its successor or assignee who acquires title to a timeshare as a result of the foreclosure of the mortgage or by deed in lieu of foreclosure of the mortgage shall be exempt from liability for all unpaid assessments attributable to the timeshare or chargeable to the previous owner which came due prior to acquisition of title by the first mortgagee.

(f) If the developer agrees to guarantee the level of assessments for the timeshare program for any period of time, the developer may be excused from the payment of the developer's share of the assessments that otherwise would have been assessed against developer-owned timeshares during the guarantee period, provided that the developer guarantees that (i) during the guarantee period the assessments against owner timeshares will not increase over the dollar amount stated in the adopted, good-faith budget of the timeshare program and (ii) the developer will pay any amount by which all common expenses incurred during the guarantee period exceed the total revenues of the timeshare program during the guarantee period. (2021-163, s. 1(c); 2021-192, s. 5(a).)